

Defendant.

C.A. No. 04-269 S

Juan Dellosantos and Antonio Dellosantos (collectively, "Plaintiffs"), pro se, object to Magistrate Judge Jacob Hagopian's Report and Recommendation, which recommends that this Court grant Cornell Corrections, Inc.'s ("Defendant") Motion for Summary Judgment "because of an insufficiency of process and an insufficiency of service of process." (Dkt. 40); see Fed. R. Civ. P. 12(b)(4), (5).¹ Plaintiffs' objection does not dispute Judge Hagopian's analysis; rather, it explains Plaintiffs' unfamiliarity with the Federal Rules of Civil Procedure and requests court-appointed counsel.²

An independent review of the record, see 28 U.S.C. § 636(b) (1) (calling for de novo review), leads this Court to conclude that

¹ Defendant's filings reveal that Plaintiffs intended to serve either "Cornell Corrections of Rhode Island, Inc." or "Cornell Company, Inc.," or both. For the purposes of this Order, this writer shall refer to these parties simply as "Defendant."

² Judge Hagopian previously denied Plaintiff Antonio's request for court-appointed counsel on May 17, 2006.

Plaintiffs failed properly to effect service upon Defendant, despite ample opportunity to do so. Plaintiffs filed their complaint on July 1, 2004. Although Plaintiffs had not properly served Defendant by November 2004, Judge Hagopian, on December 13, 2004, granted Plaintiffs' request for a thirty-day extension. It appears from the record that Plaintiffs failed ultimately to comply with the extension. Without evidence of sufficient service or additional enlargements of time, it is unclear to this Court why litigation persisted beyond January 13, 2005, or why Defendant choose to attack deficiencies in service through a Rule 56 motion. In any event, without sufficient process or service of process, this Court is without jurisdiction to proceed.³

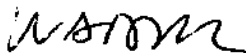
The Report and Recommendation is accepted, with the sole modification that this Court shall treat Defendant's Motion as one for dismissal under Rules 12(b)(4) and (5). Consequently, Plaintiffs' complaint is dismissed without prejudice.

By Order:



Deputy Clerk

ENTER:



William E. Smith
United States District Judge
Date:

8/30/06

³ Defendant suggests that this Court consider granting summary judgment on additional grounds as well. This request is denied.